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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

DRAKES BAY OYSTER COMPANY *et al.*

Case No. 12-cv-06134-YGR

Plaintiffs,

JOINT STATUS UPDATE;
STIPULATION;
[PROPOSED] ORDER

v.

S.M.R. JEWELL, in her official capacity as
Secretary, U.S. Department of the Interior, *et al.*

Date: March 3, 2014

Defendants.

Time: 2:00 p.m.

Court: Hon. Yvonne Gonzalez Rogers,
Oakland Courthouse 5 – 2nd Floor

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JOINT STATUS UPDATE

On February 4, 2013, this Court issued an Order Denying Plaintiffs' Motion for Preliminary Injunction (Doc. #89).

On February 6, Plaintiffs filed a Notice of Appeal from that Order (Doc. #90).

On February 25, the Ninth Circuit Court of Appeals issued an Order, *inter alia*, granting Plaintiffs an injunction pending appeal and expediting the calendaring of that appeal.

On September 3, the Ninth Circuit Court of Appeals issued an opinion affirming this Court’s Order Denying Plaintiffs’ Motion for Preliminary Injunction.

On September 30, this Court entered an Order (Doc. #113), inter alia, staying Defendants' response to the Amended Complaint (Doc. #44) pending the filing by Plaintiffs of a Second Amended Complaint, and giving Plaintiffs until not more than 28 days following the issuance of the mandate by the Ninth Circuit to file a Second Amended Complaint.

On October 18, Plaintiffs filed a petition for rehearing en banc in the Ninth Circuit.

On November 12, this Court entered an Order (Doc. #117) that provided in pertinent part:

If the Ninth Circuit has not ruled on Plaintiffs' petition for rehearing en banc by five (5) business days prior to March 3, the parties shall submit a joint status update so informing the Court. The parties may also contact the Courtroom Deputy to advance the Case Management Conference date, if necessary.

On January 14, 2014, the Ninth Circuit issued an Order, *inter alia*, denying Plaintiffs' petition for rehearing en banc.

On January 27, the Ninth Circuit issued an Order granting Plaintiffs' motion to stay the issuance of the mandate for 90 days pending the filing and disposition of a petition for writ of certiorari with the United States Supreme Court.

Rule 41(d)(2)(B) of the Federal Rules of Appellate Procedure provides that if a party files a petition for writ of certiorari, and so notifies the circuit clerk in writing, within the period of the stay of the mandate, then “the stay continues until the Supreme Court’s final disposition.”

STIPULATION

Having met and conferred through counsel by telephone, Plaintiffs and Defendants stipulate that the Court should enter an order continuing the Case Management Conference currently scheduled for March 3, 2014 to a date and time of this Court's convenience following the issuance of the mandate by the Ninth Circuit. If the mandate has not issued by five (5) business days prior to the continued conference, the parties shall submit a joint status update by that date so informing the Court.

8 Accordingly, Plaintiffs and Defendants respectfully request that the Court approve this
9 stipulation by entering the Order proposed below.

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11 || Respectfully submitted this 24th day of February, 2014.

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By: /s/ Stephen M. Macfarlane (per authorization)
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BRISCOE IVESTER & BAZEL LLP

By: /s/ Peter Prows
PETER PROWS
Attorneys for Plaintiffs

1 **[PROPOSED] ORDER**

2 Good cause having been shown, the Stipulation is APPROVED. The Case Management
3 Conference previously scheduled for March 3, 2014 is continued to July 7, 2014 at 2:00 p.m., in
4 Courtroom 1. If the Ninth Circuit has not issued its mandate prior to five (5) business days prior
5 to the continued conference, the parties shall submit a joint status update so informing the Court.
6 The parties may also contact the Courtroom Deputy to advance the Case Management Conference
7 date, if necessary.

8 Dated: February 26, 2014


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10 HONORABLE YVONNE GONZALEZ ROGERS
11 UNITED STATES DISTRICT JUDGE

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